

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No.: CV2023-00015**

**Between**

**SHELDON JACK and RICARDO FARFAN**

**Claimants**

**And**

**THE MAYOR, ALDERMEN, COUNCILLORS AND CITIZENS OF THE BOROUGH OF ARIMA**

**Defendant**

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

**Claimants: Mr. David Craig**

**Defendant: Mr. Farai Hove Masaisai instructed by Mr. Shaughn Ali**

**Date of Delivery: July 11, 2024**

## REASONS

[1] By Fixed Date Claim Form the Applicant sought Judicial Review of:

- i. The failure and/or refusal of the Mayor, Aldermen, Councillors and Citizens of the Borough of Arima to provide the Claimant with access to certain requested information pursuant to an Application under the **Freedom of Information Act**<sup>1</sup> (the **FOIA**) dated September 7, 2022, despite requesting an extension until October 30, 2022 to respond.
- ii. The failure and/or refusal of the Mayor, Aldermen, Councillors and Citizens of the Borough of Arima to make an undertaking to execute a Deed of Rectification.

[2] The following Reliefs were sought against the Defendant:

- i. A Declaration that the action of the Defendant in failing to take reasonable steps to enable the Claimant to be notified of the approval or refusal of their request as soon as practicable, but in any case, not less than thirty (30) days after the date of which the request was made or alternatively acknowledged was *ultra vires*, illegal, unlawful and in breach of the provisions of **Section 15**<sup>2</sup> of the **FOIA**.
- ii. A Declaration that the Claimant is entitled to access the requested information pursuant to his Application of September 7, 2022 under the **FOIA**.
- iii. An Order of *Mandamus* to compel the Defendant to decide on the Claimant's Freedom of Information Request within seven (7) days hereof as to whether their Application has been approved or refused in accordance with **Section 15** of the **FOIA**.
- iv. A Declaration that there has been unreasonable delay on the part of the Defendant in deciding on the Claimant's request under the **FOIA**.
- v. A Declaration that failure and/or refusal of the Defendant to give an undertaking to execute a Deed of Rectification was unreasonable, irrational, procedurally unfair, procedurally improper and in breach of the Claimant's legitimate expectations.

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<sup>1</sup> **Chapter 22:02**

<sup>2</sup> **Section 15** A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.

- vi. An Order of *Mandamus* to compel the Defendant to give an undertaking to execute a Deed of Rectification.
- vii. General damages.
- viii. Aggravated and/or exemplary damages for the negligent/wilful withholding of information and its anticipated degradation of the Claimant's Claim for Judicial Review of its refusal to give an undertaking to execute a Deed of Rectification.
- ix. That the Defendant pay the costs of this Application.

### **The Grounds**

[3] The following Grounds were relied upon by the Claimant:

- i. Breach of the principles of natural justice.
- ii. Unreasonable, irregular or improper exercise of discretion.
- iii. Irrelevant consideration.
- iv. Breach of or omission to perform a duty.
- v. Unreasonable delay.
- vi. Unauthorised or contrary to law.
- vii. Deprivation of a legitimate expectation of the Claimant.
- viii. Abuse of power and/or the exercise of power in a manner that was so unreasonable that no public authority could have so exercised the power.

### **The Facts**

[4] Mr. Jack's grandfather, Carl Madoo, leased and occupied an area of land off Beckles Lane in Arima referred to as Lot Nos. 5-7 Beckles Lane, Arima measuring approximately six thousand superficial

feet (6,000ft.) in area by virtue of a Deed of Lease dated June 1, 1965, between the Defendant, the Mayor, Aldermen, Councillors and Citizens of the Borough of Arima and Carl Madoo.

- [5] Upon expiration of the Lease the Defendant consented to renew said Lease in favour of Mr. Jack and his mother, Mrs. Judith U. Madoo-Jack on July 1, 2011, however Mrs. Judith U. Madoo-Jack died before the renewal of the lease.
- [6] On February 11, 2016 the Arima Borough Corporation consented to renew the Lease with effect from January 1, 2012 for a period of thirty (30) years.
- [7] Around 2020 the Lease between the Arima Borough Corporation and Mr. Jack was drafted and the Arima Borough Corporation, through Ms. Steele, advised the drafting Attorney-at-Law that the subject area of land had been redesignated from Lot Nos. 5-7 Beckles Lane, Arima to Lot No. 1 Road Reserve off Beckles Lane, Arima. The drafting Attorney-at-Law was directed by the Defendant to amend the draft Deed such that the reference to the property demised changed from Lot Nos. 5-7 Beckles Lane, Arima to Lot No. 1 Road Reserve off Beckles Lane, Arima.
- [8] A portion of the subject area had been surveyed in 2015 by Camille Fortune-Rollock on behalf of the Defendant and found to be six hundred and twenty-seven-point six square metres (627.6m<sup>2</sup>).
- [9] The drafting Attorney-at-Law was further directed by the Defendant to annex its survey plan. The requested changes were made and the Lease executed.
- [10] Upon visiting the property on May 10, 2021, Sheldon Jack, observed that:
- i. The executed Lease did not convey the entire parcel of land his grandfather, Carl Madoo had held.
  - ii. Ms. Ann-Marie Singh, the owner of Lots 9 and 9A to the North of Mr. Jack's property fenced her property which reduced Mr. Jack's access to his leasehold property to the extent that he is unable to access his land from Beckles Lane.
- [11] An examination of the Cadastral Plan for the Beckles Lane area depicted the plot leased to Carl Madoo off Beckles Lane, Nos. 5-7 Beckles Lane, Arima, measuring 'approximately six thousand superficial feet (6,000ft.) in area'. Additionally, the Cadastral Plan revealed that:

- i. Carl Madoo's plot was bounded on the East by Beckles Lane, for a distance of one hundred and fifty superficial feet (150ft.).
- ii. The land currently occupied by Ann-Marie Singh was then occupied by Gordon.
- iii. Presently, the area's plan shows that Carl Madoo's plot has been subdivided into three (3) lots, denoted on the new plan as '1', '1A' and 'A'.

[12] The parcel of land denoted as 'A' is land that was understandably cordoned off for the Water and Sewerage Authority's (WASA's) well and pumping station, a development Mr. Jack was aware of when it took place.

[13] No explanation was proffered by the Defendant as to:

- i. How or when the Arima Borough Corporation subdivided Carl Madoo's land, into three (3) portions;
- ii. Who is the current Lessee of Lot 1A when this appears to be a portion of the plot originally leased to Carl Madoo.

[14] This issue was drawn to the Arima Borough Corporation's attention by Hugo Somarsingh, the Surveyor hired by Ann-Marie Singh, in a letter to the Defendant dated May 3, 2021. In his letter Mr. Somarsingh indicated that the access to Carl Madoo's land had been cut off, and sought the Arima Borough Corporation's intervention to rectify this issue.

[15] By **Section 123** of the **Municipal Corporations Act**<sup>3</sup> it is provided, *inter alia*, that it shall be lawful for the Arima Borough Corporation with the consent and under the Seal of the President of the Republic of Trinidad and Tobago but not otherwise to sell and demise any land vested in it.

[16] The President of the Republic of Trinidad and Tobago did not consent to the demise of the land vested in the Arima Borough Corporation in the manner executed by Lease dated December 18, 2020 (Lot No. 1 Road Reserve off Beckles Lane, Arima).

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<sup>3</sup> No. 21 of 1990

[17] The President's consent attached to the Deed, refers to Lot Nos. 5-7 Beckles Lane, Arima. This appears to be currently designated as Lots 1, 1A and A on the area's plan. Inconsistent with the President's consent, the area currently designated as 'A' has been leased by the Defendant to an unknown party. As a result, the Defendant has not renewed the Lease in accordance with the terms of the letters dated July 1, 2011 and February 11, 2016. Consequently, there has been a dramatic reduction in the area formerly leased to Mr. Madoo, and now leased to the Claimants by virtue of the renewed Lease and in respect of which they currently make rental payments to the Defendant.

[18] In light of the discrepancy regarding the size of the plot leased to the Claimants and that leased to Mr Madoo, a request under the **FOIA** was therefore made on September 7, 2022 as follows:

- i. When did the Arima Borough Corporation make the decision to subdivide Carl Madoo's land into three (3) portions.
- ii. The rationale for this decision.
- iii. Who were the Parties responsible for this decision?
- iv. Why was the decision made contrary to the Arima Borough Corporation's letters of July 1, 2011 and February 11, 2016?
- v. Why did the Arima Borough Corporation fail to notify Mr. Jack of its decision.
- vi. To whom did the Arima Borough Corporation lease Lot 1A instead of Mr. Jack.

[19] A pre-action letter was simultaneously dispatched with this request as a Deed of Rectification was required to resolve the situation, and the Defendant's undertaking to execute it would be necessary.

[20] The Defendant acknowledged receipt of the pre-action letter and the **FOIA** request, and sought an extension until October 30, 2022 to respond.

[21] To date there has been no reply or decision from the Defendant concerning:

- i. The Applicant's Freedom of Information Application request.
- ii. The requested undertaking to execute the Deed of Rectification.

[22] The combined decisions and actions of the Defendant are *ultra vires*, unreasonable, irrational, procedurally unfair, procedurally improper and in breach of the Claimant's legitimate expectations.

[23] The Claimant relied on the Affidavits of Sheldon Jack while the Defendant relied on the Affidavit of Jane Toussaint.

### **Jane Toussaint**

[24] Ms. Toussaint, an Assessment Officer employed by the Arima Borough Corporation deposed an Affidavit on behalf of the Defendant.

[25] She testified that by virtue of a Deed of Lease dated June 1, 1965, between the Arima Borough Corporation and Mr. Carl Madoo, the Arima Borough Corporation demised unto Mr. Madoo six thousand superficial feet (6,000ft.) for a period of twenty-five (25) years commencing from June 1, 1965, with the option to renew for a further fifteen (15) years which commences from and after the expiration of the term hereby granted and shall at least provide three (3) calendar months' written notice of such intention prior to the expiration of the term of the Lease.

[26] This Lease expired in the year 1990, and Mr. Madoo did not request any extension to renew the Lease.

[27] On June 17, 2005, Letters of Administration of the Estate of Carl Madoo were granted to his lawful widow Ms. Mary Madoo by the High Court of Justice, as Mr. Carl Madoo passed away on October 14, 1987.

[28] On September 19, 2007, Ms. Mary Madoo sent a letter addressed to the Arima Borough Corporation requesting a name change and renewal of the Lease for the subject property. Ms. Madoo requested that the name be changed from Carl Madoo to his daughter Judith U. Madoo-Jack and her son, Mr. Sheldon Anthony Vincent Jack, the Claimant herein and grandson of Carl Madoo.

- [29] On December 8, 2007, Ms. Judith Madoo-Jack passed away.
- [30] On December 12, 2008, Letters of Administration of the Estate of Judith Madoo-Jack were granted to Mr. Sheldon Jack by the High Court of Justice.
- [31] Pursuant to **Section 123(1)**<sup>4</sup> of the **Municipal Corporations Act of Trinidad and Tobago**, the Arima Borough Corporation may, with the approval of the President of the Republic of Trinidad and Tobago, purchase, acquire or lease any land for such purposes and on such terms and conditions as the President may approve.
- [32] On April 5, 2011, the President consented to a Lease of Lands vested in the Arima Borough Corporation, known as Lot Nos. 5-7 Beckles Lane, Arima in the Brooklyn Estate, to Judith U. Madoo-Jack and Sheldon Jack for residential purposes. The Lease term was set at thirty (30) years, with the option of renewal for a further thirty (30) years, subject to rental review every five (5) years.
- [33] In or around the year 2003, the Water and Sewerage Authority (WASA) was granted permission to develop a portion of the said lands for the purpose of erecting a pumping station.
- [34] Over the years, the subject lands experienced gradual erosion and became prone to flooding and erosion due to heavy rainfall. Portions of the lands were reclaimed by the Mausica River, resulting in a change to the topography of the said lands.
- [35] Subsequently, in or around the year 2014, the Ministry of Environment and Water Resources (Drainage Division) intervened to redirect the course of the river with the aim of preserving the lands for the occupants. This intervention involved backfilling the land, which caused a change and alteration in the dimensions of the subject lands.
- [36] On March 25, 2014, a letter was issued to the Chief Executive Officer of the Arima Borough Corporation from the Director of Drainage of the Ministry of Environment and Water Resources (Drainage Division) regarding the aforementioned improvement works.
- [37] As a result of these interventions namely, the erection of the WASA pumping station and the erosion of the lands, the subject lands underwent significant changes. Everyone who occupied

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<sup>4</sup> **Section 123(1)** A Corporation may, with the approval of the President, purchase or otherwise acquire or lease any land for such purposes and on such terms and conditions as the President may approve.



lands on Beckles Lane were aware of these damages, as they were done out of necessity and the latter by an act of God.

- [38] The Arima Borough Corporation was required to resurvey the subject lands and seek approval from the Town and Country Planning Division for the formal approval of its subdivision, which coordinated with the alterations and improvements made by the Drainage Division of the Ministry of the Environment and Water Resources' Mausica River Improvement Works.
- [39] On September 22, 2014, a letter was issued to the Arima Borough Corporation from the Ministry of Planning and Sustainable Development Town and Country Planning Division, granting permission to the Arima Borough Corporation to develop and subdivide the subject land situate at Beckles Lane.
- [40] On July 21, 2015, a survey plan was prepared by Ms. Camille Fortune-Rollock, Licenced Land Surveyor for the Beckles Lane area to this effect. The subject lands of the Claimant are denoted as Lot No. 1 onto the July 21, 2015 plan.
- [41] By letter dated September 14, 2015, the Arima Borough Corporation informed the Claimant Mr. Sheldon Jack that the realignment of the said lands had been completed, and subdivision approval had been obtained from the Town and Country Planning Division.
- [42] The letter also mentioned the 'renumbering' and 'readjustment' of each lot, and the Arima Borough Corporation requested that the Claimant indicate in writing whether he wished to enter into a new Lease arrangement with the Arima Borough Corporation. At this point in time Ms. Toussaint worked as the Arima Borough Corporation's Town Assessor II and her details were referenced within this letter for the Claimant to contact her for any further information.
- [43] By letter dated September 30, 2015, the Claimant responded to her letter, wherein he acknowledged receipt of September 14, 2015 letter and expressed his interest in entering into a new Lease arrangement with the Arima Borough Corporation. The Claimant acknowledged the renumbering and lot size adjustments and only enquired on the new subdivisions. At no point did the Claimant object to the subdivisions within his correspondence or at all.
- [44] In or about the year 2017 a site visit with the Arima Borough Corporation, the Arima Borough Corporation's Surveyor, the Claimant, and other parties affected by the subdivision namely, Mr.

Bernard Gittens and Mr. Rampertap Doon Pundit, was conducted when the Claimant observed the readjusted parcel.

[45] Following this site visit, in or about the year 2017 the Claimant contacted Ms. Toussaint and requested a copy of the survey depicting the readjustments. At no time prior to entering into the new Lease agreement did Mr. Sheldon Jack indicate any displeasure with the 'renumbering' and 'readjustment' of the lot.

[46] By letter dated June 11, 2019, Sheldon Jack indicated his desire to insert one Mr. Ricardo Nigel Farfan's name on the new Lease, fully aware of the terms and conditions, including the renumbering and resizing of the plot. Sheldon Jack did not express any discontent or misunderstanding regarding these changes.

[47] On August 2, 2019, a letter was issued by Ms. Lystra Parke Chief Executive Officer (Acting) of the Arima Borough Corporation to the Chairman of the Building and Land Committee, conferring the request made by Mr. Jack to include Mr. Farfan's name onto the Lease in place of Ms. Judith Madoo-Jack.

[48] On August 23, 2019, the Arima Borough Corporation issued a letter in response to Mr. Jack affirming his request to include Mr. Ricardo Farfan's name onto the subject lease. It was further indicated that the new Deed of Lease must be prepared at Mr. Jack's expense by his own legal representative, then submitted to the Arima Borough Corporation for vetting.

[49] Mrs. Toussaint asserted that the Claimant failed to disclose these letters between the Arima Borough Corporation and himself and consequently has painted a false narrative to the Court. His alleged lack of awareness of the size, configuration, and renumbering of the lots is belied by the fact that the Claimant's Attorney-at-Law prepared the subject Deed of Lease. The Claimant prepared and registered this Deed on December 18, 2020 based on the Arima Borough Corporation's survey plan and the site visit done upon his request where the Arima Borough Corporation identified the parcel of land.

[50] Mr. Jack was further informed that the cost of processing the Lease was seven hundred dollars (\$700.00) and instructed to visit the Arima Borough Corporation's office to collect the consent for the property at a cost of five hundred dollars (\$500.00); both said payments were made by the Claimant Sheldon Jack. Notably, this letter was headed 'Property Known as Lot 1 Beckles Lane,

Arima' and made no reference to Lot Nos. 5-7 Beckles Lane, Arima. The Claimant made no written objection to this as he knew and understood that the subject land was developed, subdivided and his relevant portion adjusted.

[51] Ms. Toussaint deposed that Mr. Jack approved the new dimensions of the plot, attended a site visit, raised no issues regarding boundaries and had no difficulty entering into a new Lease agreement with the Arima Borough Corporation. The survey plan of the Arima Borough Corporation Surveyor which had been disclosed to Mr. Jack, was attached to the registered Deed.

[52] On December 18, 2020, a new Lease was executed between the Arima Borough Corporation and Sheldon Anthony Jack and Ricardo Nigel Farfan. Pursuant to this new Lease, the Arima Borough Corporation demised unto Sheldon Jack a plot measuring six thousand seven hundred and fifty-five square feet (6,755ft.<sup>2</sup>) or six hundred and twenty-seven-point six square metres (627.6m<sup>2</sup>) for a period of thirty (30) years commencing from June 1, 2005.

[53] The terms and conditions of the new Lease were essentially the same as the previous Lease, with the exception of the size of the lot and the names of the lessees. The plot currently enjoyed by Sheldon Jack as denoted within the Deed of Lease registered on December 18, 2020 measures six thousand seven hundred and fifty-five square feet (6,755ft.<sup>2</sup>), which is larger than the plot mentioned in the previous Lease granted to Mr. Carl Madoo on June 1, 1965 Deed No. 5515 of 1965, which was measured at six thousand superficial square feet (6,000ft.<sup>2</sup>).

#### **The Claimant's Affidavit in Reply**

[54] The Claimant asserted that he did not remember writing the letter dated September 30, 2015 by which he agreed to sign the letter dated September 14, 2015 which indicated that the renumbering and adjustment of each lot had been completed and invited the Claimant to state in writing whether he wished to enter into a new Lease agreement with the Arima Borough Corporation.

[55] He however deposed that no rightminded person could have possibly deduced from the Defendant's letter that:

- i. The Arima Borough Corporation was entering into an entirely new Lease with new boundaries and a different area from that leased to Carl Madoo.

- ii. The Arima Borough Corporation intended to enter a new Lease agreement entirely disconnected from the prior agreement with Carl Madoo that it was purporting to renew.

[56] The Claimant asserted that the Defendant had mischaracterised his letter of September 30, 2015 by which he sought information about the new subdivisions; further, the frontage of the property bounded to the East by Beckles Lane has been decreased significantly which underlies his belief that the size of the lot was reduced resulting in the inability of a car to drive onto the land from Beckles Lane.

## **Discussion**

### ***FOIA Request***

[57] The Claimant sought Judicial Review in relation to the failure by the Defendant to provide information pursuant to their **FOIA** request regarding the following issues:

- i. When the Arima Borough Corporation made the decision to subdivide Carl Madoo's land into three (3) portions.
- ii. The rationale for this decision.
- iii. Who were the Parties responsible for this decision?
- iv. Why was this decision made contrary to the Arima Borough Corporation's letters of July 1, 2011 and February 11, 2016?
- v. Why the Arima Borough Corporation failed to notify Mr. Jack of its decision.
- vi. To whom did the Arima Borough Corporation lease Lot 1A to instead of Mr. Jack.

[58] The Claimant submitted that time for the filing of his Judicial Review Application began to run from October 30, 2022 when the Defendant failed to respond to his **FOIA** request and failure to give an undertaking to execute a Deed of Rectification for the subject property.

[59] I concluded that the Claimant's application for Judicial Review should be refused on the ground that Mr. Jack had been apprised throughout the process, of all the facts leading up to his execution of a new Lease for the subject parcel of land and was not a stranger to what had occurred as he

contended. The chronology of events leading up to the execution of the said Lease makes it clear that not only was the Claimant aware of the subdivision of the lot before the grant of a new Lease, he had visited the site and seen a survey plan of the plot before.

[60] Significantly, in my view, is the fact that the Claimants' Attorney-at-Law prepared the Lease for execution by the Parties and annexed thereto the very same survey plan that depicted the size and shape of the parcel. It is disingenuous of the Claimants in these circumstances to state that they were unaware of the size and shape of the frontage of the parcel.

[61] I also considered the correspondence between the Parties before the execution of the said Lease. By letter dated September 14, 2015, Mr. Jack was informed by the Defendant that the realignment of the lands had been completed and subdivision approval had been obtained from the Town and Country Planning Division. It was also indicated that the lots had been renumbered and readjusted and an inquiry made of Mr. Jack whether he wished to enter into a new Lease with the Defendant and to give such indication in writing.

[62] The First Claimant by letter dated September 30, 2015, acknowledged receipt of the Defendant's letter aforesaid and indicated his interest in entering into a new Lease with the Defendant. He acknowledged thereby the fact that the lot size had been adjusted and said lots renumbered and inquired about the subdivisions. On March 5, 2020, the Second Claimant signed a consent form relating to the assignment of the said land in which the land was described as 'Lot No. 1 formerly known as Lot Nos. 5-7 Beckles Lane, Arima'. It was not disputed by the First Claimant that he paid a site visit to the subject parcel in 2017 together with other parties affected by the subdivision as well as the Defendant's Surveyor and made no objection or made any inquiry about its size or configuration. After said visit, Mr. Jack requested a copy of the survey showing the readjustments to the lots and he was given same.

[63] The Claimants have accepted the renumbering and resizing of the lot, by visiting the site, receiving the survey plan, and their Attorney-at-Law preparing the Deed for said parcel in accordance with the survey plan without any objection, must be taken to have agreed with the new boundaries of the lot. None of the issues complained of by the Claimant are sufficient to ground a Claim for Judicial Review by reason of the fact that the Claimants had been informed of all the facts leading up to and post the subdivision of the subject land and had accepted such subdivision of the land including the resizing and renumbering before executing his Deed of Lease. There was therefore no obligation on the part of the Claimant to respond to any of the **FOIA** requests made by the

Claimants since he had been apprised by the Defendant, prior to the execution of his Deed, all of the matters raised in his request.

[64] Further, by reason of the matters recited above, there was no obligation on the part of the Defendant to give an undertaking to execute a Deed of Rectification to alter the boundaries of the lot assigned to the Claimant.

[65] In the circumstances the Claim for Judicial Review is dismissed.

[66] The Claimants to pay to the Defendant costs to be assessed by the Registrar in default of agreement.

**Joan Charles**

**Judge**